

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of TERRY WILLIAMS and DEPARTMENT OF THE NAVY,  
PHILADELPHIA NAVAL SHIPYARD, Philadelphia, Pa.

*Docket No. 97-563; Submitted on the Record;  
Issued December 8, 1998*

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DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,  
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly terminated appellant's compensation for his neck and back conditions.

On September 20, 1993 appellant, then a 41-year-old sandblaster, was wrapping hoses after working when he slipped and fell approximately 10 feet into the bilge of a ship. He stopped working as of September 22, 1993 and did not return thereafter. He received continuation of pay for the period September 22 through November 5, 1993. The Office accepted appellant's claim for lumbar strain, cervical strain and contusion of the right knee and began payment of temporary total disability effective November 6, 1993. In an October 26, 1995 decision, the Office terminated appellant's medical benefits for his neck and back conditions on the grounds that he no longer suffered from residuals of his lumbar and cervical strain conditions. In an August 29, 1996 decision, an Office hearing representative found that the weight of the medical evidence, as established by the report of Dr. Leonard Klinghoffer, a Board-certified orthopedic surgeon, showed that appellant had no continuing residuals of his neck and back injury. The Office hearing representative, therefore, affirmed the Office's October 26, 1995 decision.

The Board finds that the Office improperly terminated appellant's compensation for his neck and back conditions.

The right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization or medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition, which require further medical treatment.<sup>1</sup>

In a September 27, 1993 form report, Dr. Jack B. Karlin, an osteopath, diagnosed contusion of the right knee, acute lumbar sprain and acute cervical sprain. In a November 23, 1993 report, Dr. Corey K. Ruth, diagnosed post-traumatic cervical, thoracic and lumbosacral

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<sup>1</sup> *Frederick Justiniano*, 45 ECAB 491 (1994).

paraspinal muscle strain, right and left lumbar radiculopathy with a possible herniated nucleus pulposus and right knee contusion. He related appellant's conditions to the September 20, 1993 employment injury. A February 18, 1994 report of a magnetic resonance imaging (MRI) scan showed appellant had disc degeneration at L5-S1 with a central disc herniation with slight asymmetry to the left but no compression of the nerve roots or thecal sac.

The Office referred appellant, together with the statement of accepted facts and the case record, to Dr. Norman H. Eckbold, a Board-certified orthopedic surgeon, for an examination and second opinion. In an April 29, 1994 report, he stated that appellant had a good range of motion in the neck and shoulders. Dr. Eckbold noted that in the lumbar spine appellant was able to forward flex 60 degrees vertically. He related that the knees had full range of flexion and extension with no effusion. Dr. Eckbold noted the MRI findings of a herniated disc. He stated, however, that appellant had no objective functional deficits referable to the spine or the extremities. Dr. Eckbold indicated that he found no apparent impairment of function of the spine or extremities. He concluded that appellant was able to return to work.

To resolve the conflict in the medical evidence the Office referred appellant, together with the statement of accepted facts and the case record, to Dr. Klinghoffer. In a September 21, 1994 report, he stated that appellant had complaints related to his neck, low back and right knee which Dr. Klinghoffer related to the employment injury. He reported that his examination did not reveal any physical abnormality that might explain appellant's neck or low back symptoms. Dr. Klinghoffer noted that his x-rays revealed significant degenerative narrowing of the C5-6 disc, which might have prolonged appellant's cervical symptoms after the employment injury. He stated, however, that this would not explain the constant pain appellant described. Dr. Klinghoffer commented that appellant's subjective symptoms were greater than anything that could be explained on a physical basis. He stated that appellant's continuing complaints of constant pain in the neck and low back were due to nonphysical factors. Dr. Klinghoffer reported that he found some slight laxity of the anterior cruciate ligament, a finding that entitled appellant to some of the knee symptoms he described. Dr. Klinghoffer stated that the knee condition could be the result of the employment injury in spite of the lack of evidence that reflected a knee injury sufficiently severe to damage the anterior cruciate ligament. He concluded that a causal relationship should be recognized between the employment injury and appellant's right knee condition. Dr. Klinghoffer stated that appellant needed no treatment for his neck or low back but needed further investigation of the right knee. He concluded that appellant did not have any disability related to his neck or low back. In a June 5, 1995 report, Dr. Klinghoffer again noted that appellant complained of pain in the neck and tenderness over the trapezius muscles, the thoracic and lumbosacral regions of the spine and in the right knee. He reviewed the medical reports of record and noted that Dr. Ruth had diagnosed internal derangement of the right knee and L5-S1 herniated disc. Dr. Klinghoffer commented that there was no description of any neurologic examination. He stated that appellant had not changed substantially during the prior eight months and his opinion concerning appellant's disability was the same.

In situations where there exists opposing medical reports of virtually equal weight and rationale, and the case is referred to an impartial specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper

factual background, must be given special weight.<sup>2</sup> Dr. Klinghoffer's report is not entitled to such weight. He stated that appellant had no objective symptoms to support his complaints of pain and tenderness in the neck and back. Dr. Klinghoffer noted that Dr. Ruth had diagnosed a herniated disc. However, he made no reference to the February 18, 1994 MRI scan, which showed a herniated L5-S1 disc, which Dr. Ruth related to the employment injury. Dr. Klinghoffer's report, therefore, was not based on a proper factual background because he did not consider the evidence of a herniated disc as shown by the MRI scan and did not discuss whether the herniated disc was related to the employment injury and whether it would have provided an objective basis for appellant's symptoms. Dr. Klinghoffer's report, therefore, is not entitled to special weight and is not sufficient to resolve the conflict in the medical evidence of whether appellant continues to have any residuals of the September 20, 1993 affecting his back and neck.

The decision of the Office of Workers' Compensation Programs dated August 29, 1996, is hereby reversed

Dated, Washington, D.C.  
December 8, 1998

George E. Rivers  
Member

David S. Gerson  
Member

Bradley T. Knott  
Alternate Member

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<sup>2</sup> *James P. Roberts*, 31 ECAB 1010 (1980)